

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8470 OF 2019
(Jayshree w/o Ramdas Kharmale Vs. Ramdas s/o Muktaji Kharmale)

Mr.R.S.Kasar, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 27/08/2019

PER COURT :

1. The petitioner is aggrieved by the order dated 10/09/2018 passed by the Executing Court in RD No.139/2016.
2. The petitioner contends that she was granted Rs.3,000/- u/s 125 of the Cr.P.C. in Application No.220/2012 as maintenance. She was also granted Rs.5,000/- in RCS No.905/2012 which was preferred u/s 18 of the Adoption and Maintenance Act. The respondent/judgment debtor moved Exh.34 for seeking calculations of the total amounts and made a submission that the total amount is Rs.5,000/- and not Rs.3,000/- + Rs.5,000/-. By the impugned order, the Executing Court has concluded that the petitioner would be entitled to a total amount of maintenance of Rs.5,000/-.

3. I find that the petitioner was before this Court in Criminal Writ Petition No.1219/2017. While considering the submissions of the petitioner, this Court noted that the learned Magistrate had granted Rs.3,000/- as maintenance and the Civil Court had granted Rs.5,000/- as maintenance. However, in paragraph No.3 of the order of this Court dated 20/07/1998, it was finally recorded on internal page No.4 of the order as under :-

“In the present matter, the wife can in all recover the amount of Rs.5,000/- as monthly maintenance. She can recover Rs.3,000/- by using decision of J.M.F.C. and she can recover Rs.2,000/- by using decree of Civil Court. Thus the Sessions Judge has committed error in interpreting the provisions and also the case decided by this Court.”.

4. Finally, this Court passed its order on 20/07/2018 as under :-

“(I) The petition is allowed.

(II) The decision of the learned Sessions Judge, Ahmednagar given in Criminal Revision No.34/2014 is set aside and the judgment and order of learned J.M.F.C., Ahmednagar delivered in Criminal Application No.220/2012 is restored.

Rule is made absolute in aforesaid terms.”

5. Considering the above, I do not find that the Executing Court has committed any error. The learned Advocate for the petitioner

submits that the decree of the Civil Court cannot be modified. I am afraid, this submission is not available before this Court since the order dated 20/07/2018, passed in Criminal Writ Petition No.1219/2017 would continue to remain in force until set aside by any competent Court.

6. This petition, being devoid of merit, is therefore dismissed.

7. Needless to state, if the petitioner desires to avail of a remedy as may be permissible in law in so far as the order of this Court dated 20/07/2018 is concerned, the dismissal of this petition would not be an impediment.

(Ravindra V.Ghuge, J.)